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IN THE SUPREME COURT OF THE STATE OF UTAH

GAYLE SOUTH ARGYLE,)
)
Plaintiff and Respondent,)
)
-vs-)
)
ARTHUR MITCHELL ARGYLE,)
)
Defendant and Appellant.)

Case No. 19119

RESPONDENT'S BRIEF

Appeal from a Judgment of the
First Judicial District Court of Rich County
Honorable VeNoy Christofferson, Judge

Dennis W. Lancaster
John A. Thomas
PHILLIPS AND LANCASTER, P.C.
822 Main Street, Suite C
P. O. Box 123
Evanston, Wyoming 82930
Attorneys for Respondent

Bryce E. Roe
ROE AND FOWLER
340 East Fourth South
Salt Lake City, Utah 84111
Attorneys for Appellant

FILED

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

GAYLE SOUTH ARGYLE,)	
)	
Plaintiff and)	
Respondent,)	
)	
-vs-)	Case No. 19110
)	
ARTHUR MITCHELL ARGYLE,)	
)	
Defendant and)	
Appellant,)	
-----)	

RESPONDENT'S BRIEF

NATURE OF THE CASE

The above-entitled matter is an action for divorce.

DISPOSITION IN THE LOWER COURT

A hearing was held on the 5th and 6th days of January, 1982, before the Honorable VeNoy Christofferson, one of the Judges of the District Court of Rich County, State of Utah, at the conclusion of which the trial court granted Gayle South Argyle, plaintiff below and respondent herein, an absolute divorce; custody of the minor child of the parties, Travis South Argyle; the sum of \$350.00 per month for the support of the minor child to commence on January 6, 1982; property then in her possession; a cash settlement of \$463,000.00 in lieu of all other property rights, including alimony, with \$100,00.00

of the amount to be paid within six months from January 6, 1983, and the balance of \$363,000.00 to be paid in fifteen equal annual installments beginning August 6, 1983, of \$47,738.05 each, including principal and interest accruing from August 6, 1983, on the unpaid balance at the rate of 10% per annum until paid; the sum of \$2,000.00 for attorney's fees; and costs of court.

The trial court awarded Arthur Mitchell Argyle, defendant below and appellant herein, property in his possession at the time of the decree which would include the major asset of the marriage -- 50% of the shares of stock in Argyle Ranch, Inc.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the judgment of the trial court.

STATEMENT OF FACTS

For the most part the Respondent would agree with the Statement of Facts as set forth in Appellant's brief, pages 2 through 7; however, there are certain areas characterized as facts by Appellant's brief with which the Respondent would disagree.

The first such statement is the statement contained on page 4 of appellant's brief, that "the option was put into the agreement because of Emma's fear that someone might want to pull out or to try and hold another partner up for too much money (Tr. 185)." This could not possibly be a statement of fact since Emma Irita Argyle had died previous to the trial and did not testify at the trial. An objection was made at the trial on the basis that such a statement would be hearsay. The Court, however, did allow the statement into the record, but the Court stated, "I'll allow it not for the truth of what she may have said." And the Court continued and stated, "But I'll allow it simply as a background for whatever explanation he [Arthur Argyle] feels his interest is." (Tr. 184-185).

The next statement with which Respondent would disagree is found on page 4 of Appellant's brief, where it is stated, "At the time of trial, he [Arthur Argyle] was drawing a salary of \$200 to \$300 per month..." The Respondent would disagree with the amount stated as being the salary of Arthur Argyle. There is contradictory testimony contained at Tr. 37, where it is stated by the Respondent under oath that,

Well, like I say, we started out around \$200 and then I remember we went to Grandma and we said we had a lot of people to feed, and finally she bought the groceries, and as time went on as things got bigger and better, we would -- the increase would go to where, when I left, we were drawing around \$600 a month.

Therefore, there is a conflict in the testimony as to the exact salary that Arthur Argyle was drawing at the time of

trial. The Appellant stating between \$500 to \$300 per month, and the Respondent stating that this figure was \$600 per month.

The next statement with which the Respondent would disagree is found on page 5 of Appellant's brief, where it is stated that Richard T. Huffman valued the ranch by using a different method of valuation than did Respondent's appraiser, Mark Crystal. From the testimony that was given, it can be seen that both Mr. Crystal and Mr. Huffman used the same appraisal approach in arriving at a valuation for the ranch property. Both appraisers used the market data method, based upon comparable sales. On cross-examination, Mr. Crystal testified that it was the market data approach which he used. (Tr. 115). Mr. Huffman also testified that he used the market data approach. (Tr. 209).

The final statement of fact with which Respondent disagrees is the general statement made by Respondent at page 7 of Respondent's brief that there was no finding as to the valuation of the stock. That the Court did in fact find a value of the stock can be shown by a review of the transcript beginning at page 47. In response to the question to Respondent by Respondent's attorney on direct examination, of the type of property that Argyle Ranch, Inc., had, the following exchange occurred:

"Mr. Roe: Well, I'm going to object to it, Your Honor, as to the assets of the corporation. I think we're getting a little far afield. The testimony is that the property that's owned by Arthur Argyle, the Defendant in this case, is stock in the Argyle Ranch, Inc., and I think that what we're talking about and we're trying to get

into on the question of the division of any property, we're talking about the corporate stock and its valuation. I think the various things that the corporation owns, at least if they don't go to that question, are not material to this proceeding.

The Court: Well, I assume it's relevant in fixing what the stock is worth.

Mr. Lancaster: Yeah, that is our position.

The Court: The stock is only worth what the corporation assets are, I guess.

Mr. Roe: Well, there may be some other factors too, Your Honor, that affect the value of the shares much beyond that.

The Court: True. But I assume that's one of the relevant factors in determining the value of the stock, what the corporation owns.

Mr. Roe: If that's what it goes to, I have no objection.

Mr. Lancaster: Your Honor, that is our position.

The Court: I assume that's what the question was.

Mr. Lancaster: That the shares can only be valued based on the underlying assets.

The Court: Okay."

(Tr. 40-41).

Therefore, it can be seen from this exchange that the Court did hear this evidence on the basis that it was one of the factors in establishing the value of the stock of the corporation which was owned by Arthur Argyle.

Other facts which the Respondent believes are relevant to the present appeal include the time of duration of the marriage. In the present case, the parties were married on September 29, 1955. (Tr. 9). Therefore, the duration of the marriage was twenty-seven years.

The present income of the parties and the property acquired during the marriage is also another relevant fact in the appeal. The Respondent testified that in 1963 (Tr. 142-143), receiving a salary of \$600 per month. (Tr. 37). Furthermore, all of Arthur Argyle's utilities are paid for by the corporation, food is purchased for Arthur Argyle by the corporation, gasoline is purchased for Arthur Argyle by the corporation, and the corporation buys the vehicles for Arthur Argyle's use. (Tr. 146).

The property acquired during the marriage is also another factor and how that property has increased in size since the marriage. When the ranch was incorporated in approximately 1963, approximately 2,700 acres was held by the ranch. This figure has increased to almost 8,000 acres at the time of the divorce. At the time the ranch was incorporated, the ranch owned approximately 300 to 400 head of cattle, 400 head of sheep, and five small tractors. The holdings of the corporation have increased so that at the time of the divorce hearing there were approximately 4,000 sheep, 700 cattle, twenty or thirty horses, and an increase from very small tractors to the acquisition of very large items of heavy equipment. Also, substantial pieces of property have been bought so that the corporation now holds approximately 8,000 acres of property. (Tr. 142-145). The appraisal showing a list of the assets was received into evidence as Plaintiff's Exhibit 4 at page 258 of the Transcript.

Another factor which should be considered in a divorce is the number of children reared and their present ages. In the present marriage, five children have been born, Donna Kay was 26 at the time of the hearing on divorce; Kent was 24, Bart was 22, Pret was 18, and Travis was 8. (Tr. 10).

The present mental and physical health of the parties and their ages is also a factor that should be considered in a divorce action. In the present case, testimony was elicited that Gayle, who is 45 years old, not only suffered from physical problems but had experienced a nervous breakdown shortly after the separation between her and Arthur Argyle. In the present case, the Respondent was hospitalized for three days for a nervous breakdown, and then had to undergo outpatient counseling with Dr. Curtis Canning in Logan, Utah, and incurred medical expenses as a result of that treatment. Her physical health is also not very good. She testified that she had rheumatoid arthritis, which is a crippling disease, and because of which she had been hospitalized twice. (Tr. 20-21).

The Respondent also testified as to what the present costs of living were for her. These amounted to approximately \$1,100.00 per month, and did not include any type of expenditures for a residence, which she would have to acquire after the divorce. (Tr. 28). On the other hand, Arthur Argyle does not appear to have hardly any expenses whatsoever, since the corporation supplies him with most of his needs. (Tr. 43).

ARGUMENT

1. THE DECREE OF THE TRIAL COURT DID NOT IMPROPERLY APPELLEANT SUCH A SERIOUS INEQUITY AS TO MANIFEST A CLEAR ABUSE OF DISCRETION AND THE EVIDENCE DID NOT CLEARLY PREPONDERATE AGAINST THE FINDINGS OF THE TRIAL COURT.

U.C.A., Section 30-3-5(1) states:

When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children, as may be equitable. The court shall have continuing jurisdiction to make such subsequent changes or new orders with respect to the support and maintenance of the parties, the custody of the children and their support and maintenance, or the distribution of the property as shall be reasonable and necessary. Visitation rights of parents, grandparents and other relatives shall take into consideration the welfare of the child.

When the Court undertakes a division of the property, no fixed rule is to be applied in all cases; but the guiding principle is consideration of the total situation, including all relevant factors. As stated in Wilson v. Wilson, 5 Utah 2d 79, 296 P.2d 977, 979-80, (1956):

The court's responsibility is to endeavor to provide a just and equitable adjustment of their economic resources so that the parties can reconstruct their lives on a happy and useful basis. In doing so it is necessary for the court to consider, in addition to the relative guilt or innocence of the parties, an appraisal of all of the attendant facts and circumstances: the duration of the marriage; the ages of the parties; the social positions and standards of living; their health; considerations relative to children; the money and property they possess and how it was acquired; their capabilities and training; and their present and potential incomes.

In Macdonald v. MacDonald, 120 Utah 573, 236 P.2d 1066, 67P (1951) the Court divided these relevant factors into two sets as follows:

The first six points relate to conditions existing at the time of the marriage:

- (1) The social position and standard of living of each before marriage...
- (2) The respective ages of the parties...
- (3) What each may have given up for the marriage...
- (4) What money or property each brought into the marriage...
- (5) The physical and mental health of the parties...
- (6) The relative ability, training and education of the parties...

The following points (7 to 15 inclusive) relate to conditions to be appraised at the time of the divorce, giving some attention to comparison with points 1 to 6 inclusive:

- (7) The time of duration of the marriage...
- (8) The present income of the parties and the property acquired during marriage and owned either jointly or by each now...
- (9) How it was acquired and the efforts of each in doing so...
- (10) Children reared, their present ages, and obligations to them or help which may in some instances be expected...
- (11) The present mental and physical health of the parties...
- (12) The present age and life expectancy of the parties...
- (13) The happiness and pleasure, or lack of it, experienced during marriage...
- (14) Any extraordinary sacrifice, devotion or care which may have been given to the spouse or others, such as mother, father, etc., and obligations to other dependents having a secondary right to support...
- (15) The present standards of living and needs of each including the cost of living...

In Searle v. Searle, 522 P.2d 697 (Utah 1974), a case in which the trial court used many of the factors stated in the

MacDonald case to arrive at an equitable distribution of property, the decision of the trial court awarding approximately one-third of the property as awarded during 11 years of marriage to the wife rather than awarding permanent alimony was held not to be an abuse of discretion by the Utah Supreme Court.

In Granne v. Granne, 587 P.2d 144 (Utah 1978), the wife of approximately 31 years was awarded approximately 33% of the marital estate valued at \$650,000.00 and in addition the sum of \$1,400.00 per month as alimony was awarded. The wife was also awarded the sum of \$8,000.00 in attorney's fees. On review the Utah Supreme Court held that there was no abuse of discretion by the trial court.

In a fairly recent divorce action, Pope v. Pope, 589 P.2d 752 (Utah 1978), the District Court for Cache County, sitting without a jury, entered a decree divorcing the parties, dividing their property, and awarding attorney's fees and costs to the plaintiff-wife. In that case the plaintiff and defendant were married more than ten years and had two daughters as issue of the marriage. In its division of the property the District Court awarded the defendant-husband the family business and certain other items of personalty valued at \$76,577.00. The plaintiff was given the family residence, subject to the existing mortgage, the household furnishings, and certain other items of personalty. The value of this property was \$26,609.00. The District Court also ordered the

Defendant to pay Plaintiff \$24,984.00 in cash, which was one-half of the amount by which the net value of the property exceeded the Defendant exceeded that awarded the Plaintiff. On appeal the Defendant argued that the failure of the District Court to include debts owed by the Defendant in the amount of \$24,225.00 in calculating the value of the business and other property awarded to him was a serious inequity since Plaintiff actually received 65% of the net value of the property and Defendant only received 35% of the net value of the property. The Utah Supreme Court held that the trial court's division of marital property resulting in 65% of the benefits to the wife and 35% to the husband did not constitute an abuse of discretion, since the husband was awarded the income-producing assets of the family, the husband had two college degrees and several years experience in operating his business, and the wife had no college education and was unemployed at the time of the trial; the trial court did not err in awarding the wife \$1,500 in attorney fees and \$30 in costs, notwithstanding the fact that the wife, in her pleadings, prayed for only \$1,000 in attorney fees and failed altogether to pray for costs; and the trial court did not err in ordering that if the husband failed to pay the wife the sum of \$24,984.00 within six months of the trial court's order that such amount would bear interest at the rate of 10% per year.

The Utah Supreme Court has stated as a broad proposition in the case of Englert v. Englert, 576 P.2d 1274, 1276 (Utah

1978), that property subject to division encompassed all assets of every nature possessed by the parties, whenever obtained and from whatever source or cause. In the Thompson case, the Utah Supreme Court held that the trial court properly considered as a family asset the husband's accrued retirement fund amounting to \$29,717.00.

While the Utah courts have not yet adopted the contract or partnership theory of marriage wherein marriage is viewed as a business to which the husband and wife contribute and share equally in all gains and losses, the Utah Supreme Court has approved the division of property acquired by the husband during marriage in which the wife had no legal interest. An example of this is the case of Hamilton v. Hamilton, 562 P.2d 235 (Utah 1977), where real property which was received during the marriage by a gift from the husband's father with title being only in the husband's name was divided by the trial court.

Finally, the case of Weaver v. Weaver, 21 Utah 2d 166, 442 P.2d 928 (1968), stands for the proposition that assets which are the result of a gift to only one of the spouses may be included in the marital estate. In the Weaver case, the trial court awarded the plaintiff-wife a decree of divorce and provided that the property of the parties should be divided equally between them. The defendant-husband had accumulated from his medical practice about \$250,000.00. In addition, other assets in the sum of \$500,000.00 had been built up chiefly

through the growth in value of stock in the Combined Insurance Company. A considerable portion of the stock had been acquired by the Defendant by purchase and gift from his father and sister. The Utah Supreme Court held that the trial court had not abused its discretion.

As this court has stated in MacDonald v. MacDonald, 120 P.2d 573, 236 P.2d 1066, 1068, (1951):

It is true, as plaintiff maintains, that this court has announced the doctrine that in divorce cases it will weigh the evidence and may substitute its judgment for that of the trial court. Dahlberg v. Dahlberg, 77 Utah 157, 292 P. 214; Hendricks v. Hendricks, 91 Utah 553, 63 P.2d 277. Nevertheless, this court should not do so lightly, nor merely because its judgment may differ from that of the trial judge. We adhere to the qualifications set forth in the more recent expressions of this court: that the judgment will not be disturbed unless the evidence clearly preponderates against the finding of the trial court; or there has been a plain abuse of discretion; or where a manifest injustice or inequity is wrought. Anderson v. Anderson, 104 Utah 104, 138 P.2d 252; Allen v. Allen, 109 Utah 99, 165 P.2d 872. See discussion of this point by Mr. Justice Turner in the latter case.

In the case of Wilson v. Wilson, 5 Utah 2d, 79, 296 P.2d 977, 981, (1956), the court stated:

It is true, as defendant contends, that a divorce proceeding is equitable and that it is within the prerogative of this court to review the evidence and to substitute its judgment for that of the trial court under proper circumstances. The more recent pronouncements of this court, and the policy to which we adhere, are to the effect that the trial judge has considerable latitude of discretion in such matters, and that his judgment should not be changed lightly, and in fact, not at all, unless it works such a manifest injustice or inequity as to indicate a clear abuse of discretion.

In the case of Weaver v. Weaver, 21 Utah 2d, 166, 442 P.2d 928, 929, (1968), the court stated:

The decisions of this court have not announced a fixed rule or formula for the division of property, but the rule announced in practically all of its cases is to the effect that the trial court has wide discretion in these matters, and the findings of the trial court will not be disturbed unless the record shows there has been an abuse of discretion on the part of the court.

In the case of Searle v. Searle, 512 P.2d 697, 700 (Utah 1974), the court stated:

Although it is both the duty and prerogative of this court in a case of equity to review the facts as well as the law, Article VIII, Section 9, Constitution of Utah, the trial judge has considerable latitude of discretion in adjusting the financial and property interests in a divorce case. The actions of the trial court are indulged with a presumption of validity, and the burden is upon appellant to prove such a serious inequity as to manifest a clear abuse of discretion.

In the case of English v. English, 565 P.2d, 469, 470 (Utah 1977), the court stated:

The trial court, in a divorce action, has considerable latitude of discretion in adjusting financial and property interests. A party appealing therefrom has the burden to prove there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error; or the evidence clearly preponderated against the findings; or such a serious inequity has resulted as to manifest a clear abuse of discretion.

This view has also been adopted in the case of Pope v. Pope, 589 P.2d 752, 753 (Utah 1978).

In the present case, it was undisputed that Argyle Ranch, Inc., is a corporation, that the stock is held equally by Ralph Argyle and Arthur Argyle, that each of them owns 43,600 shares of stock in the corporation, that they are presently purchasing from the estate of Laura Lynn Argyle an additional 21,500 shares each, and that a total of

approximately \$20,000 is still owed to the estate for the work.

There was testimony from three experts in the present case, Mark Crystal on behalf of the Respondent; Richard T. Huffman and Blaine Davis Hales on behalf of the Appellant, and from Gayle Argyle and Ralph Argyle concerning the values of the assets held by Argyle Ranch, Inc. There were also financial statements indicating the net worth of the corporation from 1978 through 1982. While appellant asserts that none of the witnesses testified as to the value of the stock owned by Arthur Argyle in Argyle Ranch, Inc., and that it was not shown by any of the exhibits, the Respondent would take exception to this argument. It is clearly shown by the Transcript of the hearing in this case, that the purpose by the Respondent of putting on evidence as to the value of the assets owned by Argyle Ranch, Inc., was to show the value of the stock. This can be seen in the Transcript at page 41, which has been previously discussed in the above Statement of Facts.

Indeed, the court was faced with some complex evidence, but the court did not take the easy way out, as characterized by Appellant. It looked at the most recent financial statement of the corporation; it also looked at the appraised values as given by the experts in the case, and then used the net worth of defendant's Exhibit 9 to value the corporate assets and concluded that the value of the corporation was \$1,962,008.00. It then deducted from this sum \$109,000.00, representing the

value fixed on the property conveyed to the corporation in 1963 by Emma Irita Argyle. After deduction of the \$169,000.00, the value of the corporation's assets was fixed at \$1,250,000.00 and the value of Arthur Argyle's interest in the corporation was taken to be half of this amount, or \$625,000.00. The court then divided this amount equally and entered a money judgment in favor of the Respondent for \$463,252.00, representing her share of the property of the marital estate. To characterize this as the court taking the easy way out, is totally unjustified. The court in the present case, in its discretion, and based upon the evidence before it, apparently accepted the position of the Respondent that the stock of the closely held corporation of Argyle Ranch, Inc., could best be valued by examining the net value of the assets of the corporation. This was clearly within the discretion of the court to take this approach, and it was the only approach which was offered to the court by the evidence before it. The Appellant in the present case, did not attempt to value the stock in any manner differently than that set forth by the Respondent. Otherwise, why would the Appellant put on the testimony of two experts, Richard T. Huffman and Blaine Davis Hates, regarding the value of the assets held by Argyle Ranch, Inc.? The only other possible evidence set forth by the Appellant in the case as to the value of the stock was the stock purchase agreement, or buy-sell agreement, which valued the shares of stock at \$1.00 per share. This evidence was clearly before the court and, as

in either of fact, the validity of the Argyle buy-sell agreement had been upheld by this very same court in The Matter of the Estate of Irene Irene Mitchell Argyle, also known as Emma Irene Irvine, Deceased, (Probate No. 433, District Court of Rich County). The court took judicial notice that this buy-sell agreement had been upheld; therefore, faced with the evidence that the value of the shares of stock should be based upon the net assets of the corporation or that it should be based on the value of the stock as set in the buy-sell agreement, the court accepted the Respondent's position that the value of the shares of stock in Argyle Ranch, Inc., were worth well more than the arbitrarily set figure of \$1.00 per share of the buy-sell agreement. As stated in Appellant's brief at Page 12, the Appellant is not even arguing that the court is bound to value the stock at the price set in the buy-sell agreement, but does argue that the court was required to take the stock purchase agreement into consideration. There is no evidence whatsoever that the court did not take the stock purchase agreement into consideration. It does appear, however, that the court did accept the Respondent's theory of the value of the stock based upon the net assets of the corporation, rather than the arbitrarily set amount established by the buy-sell agreement. This was clearly within the discretion of the court based upon the evidence before it.

The question of the method of valuing closely held stock for Federal estate tax purposes under Section 2031(b) of the

Internal Revenue Code of 1954 [26 USC], Section 2031(b) has been discussed in the citation contained in 22 AFR 102, 21.

The text of Section 2031(b) of the Internal Revenue Code of 1954 reads as follows:

(b) Valuation of unlisted stock and securities. In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

The pertinent Treasury Regulation, appearing at 22 CFR, Section 20.2031-2(f) states:

(f) Where selling prices or bid and asked prices are unavailable. If the provisions of paragraphs (b), (c) and (d) of this section are inapplicable because actual sales prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

(1) In the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and

(2) In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the "other relevant factors" referred to in subparagraphs (1) and (2) of this paragraph are: The good will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value

depends upon the facts of each case. In addition to the relevant factors described above, consideration shall also be given to nonoperating assets, including proceeds of life insurance policies payable to or for the benefit of the decedent, to the extent such nonoperating assets have not been taken into account in the determination of net worth, prospective earning power and dividend-earning capacity. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of any examinations of the company made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

Rev. Rul. 59-60, CB, 1959-1, page 237, provides that in valuing the stock of closely held corporations, or the stock of corporations where market quotations are not available, all other available financial data, as well as all relevant factors affecting the fair market value, must be considered for estate and gift tax purposes. The ruling provides that no general formula may be given that is applicable to the many different factual situations arising in the valuation of such stock; Rev. Rul. 59-60, CB 1959-1, page 237, does, however, outline the general approach, methods, and factors which the IRS has determined must be considered in valuing such securities.

Section 3, Approach to Valuation, provides:

A determination of fair market value, being a question of fact, will depend upon the circumstances in each case. No formula can be devised that will be generally applicable to the multitude of different valuation issues arising in estate and gift tax cases. Often, an appraiser will find wide differences of opinion as to the fair market value of a particular stock. In resolving such differences, he should maintain a reasonable attitude in recognition of the fact that valuation is not an exact science. A sound valuation will be based upon all the relevant facts, but the elements of common sense, informed judgment and reasonableness must enter into the process of weighing

those facts and determining their relative significance.

Section 4 sets forth the factors to be considered in such a case, and states:

It is advisable to emphasize that in the valuation of the stock of closely held corporations or the stock of corporations where market quotations are either lacking or too scarce to be recognized, all available financial data, as well as all relevant factors affecting the fair market value, should be considered. The following factors, although not all-inclusive are fundamental and require careful analysis in each case:

The nature of the business and the history of the enterprise from its inception.

The economic outlook in general and the condition and outlook of the specific industry in particular.

The book value of the stock and the financial condition of the business.

The earning capacity of the company.

The dividend-paying capacity.

Whether or not the enterprise has goodwill or other intangible value.

Sales of the stock and the size of the block of stock to be valued.

The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter.

Section 5(b) of the ruling, which discusses weight to be accorded the various factors, states:

(b) The value of the stock of a closely held investment or real estate holding company, whether or not family owned, is closely related to the value of the assets underlying the stock. For companies of this type the appraiser should determine the fair market value of the assets of the company. Operating expenses of such a company and the cost of liquidating it, if any, merit consideration when appraising the relative values of the stock and the underlying assets. The market values of the underlying assets give due weight to potential earnings and dividends of the particular items of property underlying the stock, capitalized at rates deemed proper by the investing public at the date of appraisal. A current appraisal by the investing public should be superior to the retrospective appraisal of

individual. For these reasons, adjusted net worth should be accorded greater weight in valuing the stock of a closely held investment or real estate holding company, whether or not family owned, than any of the other secondary methods of appraisal, such as earnings and dividend paying capacity.

In the present case, this would seem to be the most sensible and accurate method of appraising the value of the stock of Argyle Ranch, Inc., since the major assets of the corporation do consist of real estate.

In many of the cases dealing with the value of closely held stock for purposes of federal estate tax, the respective courts have appeared to rely primarily upon net asset value or the book value of the shares, at least as a starting point for the determination of such value. As examples of these holdings, are the case of Estate of Byrd v. Commissioner, 388 F.2d 213, (5th Cir. 1967), in which it was recognized that the valuation of stock in personal or closely held companies may sometimes, if not usually, be made with reference to the value of its underlying assets.

Also, in the case of Yeazel v. Coyle, 68-1 U.S.T.C. 912524, (D.C. Ill., 1968), the court rejected an estate's valuation of \$564.00 per share of stock in a corporation engaged in the manufacture and sale of embalming fluid, but whose principal asset was a stock portfolio consisting of securities having a market value in excess of one-half million dollars over their cost basis. The estate's witness admitted that he was valuing the block of stock on the basis that it represented a minority interest and gave this as

his reason for considering only the book value of the assets as opposed to the market value in arriving at his figure. In arriving at respective values of \$1144 per share and \$1147 per share, the two witnesses for the government computed book value by taking the subject corporation's tangible assets at cost, less an appropriate depreciation or reserve, just as had the estate's witness in computing book value; however, both of the government's witnesses took into consideration the increase in the security portfolio, and also considered the market price of the stock of other comparable companies. The court emphasized that there was no rational or legal basis for valuing the stock of the subject corporation without giving some consideration to the marked appreciation of the assets of its security portfolio, and concluded after considering all of the evidence that the fair market value of the stock was \$400.66 per share.

In Bothgery v. United States, 475 F.2d 591, (Ct. Cl. 1973), the court held that the fair market value of a closely held automobile dealership is generally equal to net book value, subject to adjustment for assets not reflected on the books at the current values, and that earnings do not provide a reliable basis for stock valuation in such cases. Examining the total assets and liabilities of the corporation, the court concluded in this connection that the evidence showed that the value of the dealership was closely related to and generally corresponded to the value of its underlying assets.

Also, in Estate of Sobel v. Commissioner, 10 T.C.M. 613, (1951), the court concluded that it had determined the fair market value of the closely held stock on the basis of all relevant factors having a bearing upon such value, but the court also appeared to be largely concerned with the fair market value of the corporation's principal asset, real estate, that had been sold shortly after the death of the decedent, who operated the particular corporation as a one-man business, which virtually ceased to function following his death.

Finally, in the case of Estate of Lee v. Commissioner, 69 T.C. 860, the valuation of 80% of the common stock and 100% of the preferred stock of a closely held holding company in a community property state was keyed to its net asset value rather than to such factors as prospective earning power, dividend paying capacity, goodwill and economic outlook, because assets of the holding company were almost exclusively undeveloped realty and the active business operation accounted for less than 5% of the stipulated net asset value of the holding company.

With regards to the particular issue involved in the present case, the value of stock in a closely held corporation in an action for the dissolution of a marriage, several cases need to be considered. Appellant has discussed the case of Miller v. Fether, 28 Wash. App. 838, 627 P.2d 110 (1981). While much of what the Appellant has stated about this case is correct, the Washington court concluded by stating:

We conclude that the courts which have recently considered the question of the application of a buy and sell agreement to the determination of the value of the stock of a close corporation in a dissolution proceeding have held that such an agreement does not serve to fix conclusively and arbitrarily the value of the stock. The stock retirement agreement was in evidence at trial and the trial court's evaluation of the stock was below the capitalized earnings computation proffered by Mrs. Suther's experts. The trial court did not err.

Therefore, it can be seen by the holding in this case dealing with the proper method of valuation that a buy and sell agreement is merely a factor and did not limit the court to awarding a higher figure for the value of the shares of stock. In the present case, the stock buy and sell agreement was before the trial court and was considered by the trial court. However, the trial court was not bound by the buy and sell agreement and exercised its discretion which, according to the case law, is not an abuse of discretion, and based its value of the stock upon the net assets of the corporation.

The next case discussed by Appellant is In re Marriage of Rosan, 24 Cal. App. 3d 885, 101 Cal. Rptr. 295, 299 (1972). In the case of In re Marriage of Rosan, however, the stock value as stated in a buy-sell agreement was not similar to the arbitrary and unsubstantiated value of stock contained in the buy-sell agreement in the present case; rather, in In re Marriage of Rosan, the value of the stock was determined by a formula which was based primarily on the book asset value of the corporation, with certain adjustments but excluding goodwill. At the time of trial in that case, the computed value of the stock was \$43,873.00, and the court fixed the

value of 70% of its computed value in the amount of \$30,711.00.

Also in the case of In re Rosan, the court took into consideration in valuing 70% of the computed value that the assets awarded to the wife in that case were significantly more liquid than the stock awarded to the husband. In that case, the wife received in excess of \$7,000.00 in cash and trust funds, stock valued at \$1,304.00, as well as an undivided one-half interest in deeds of trust valued at \$2,180.00 and producing a small amount of income. Also in that case, the husband only owned a 15% interest in the close corporation, and therefore had a minority interest. In the present case, both Arthur and Ralph Argyle are equal owners of the stock in Argyle Ranch, Inc. In interpreting the case of In re Marriage of Rosan, the Washington appellate court in Suther v. Suther at page 114 stated:

In re Marriage of Rosan, 24 Cal. App. 3d, 885. 101 Cal. Rptr. 295, (1972) relied upon by Mr. Suther for the proposition that the agreement should bind the court, stands for the same proposition as Moffatt [In re Marriage of Moffatt, 297 N.W.2d 15 (Iowa 1979)] -- that the agreement is only a factor to be considered in arriving at a value. In Rosan, a buy and sell agreement provided that upon voluntary termination of the husband from his job or upon termination for good cause, first the corporation and then its majority shareholder would be entitled to purchase the husband's shares for 70% of "computed value" according to the agreement. The trial court in fact valued the stock using the formula, and the appellate court stated:

Under the circumstances disclosed by the evidence, and particularly in view of the restrictive covenants on the disposition of the stock and its resulting illiquidity, factors substantially affecting its value, the trial court was justified in assessing the value of the stock [according to the agreement's formula] (Emphasis added). In re

Marriage of Losan, supra, 161 Cal. 441, 299. Clearly the court felt that the agreement was a factor to be considered in determining value, but did not find the court as a matter of law to its price.

There are many other cases in which the courts have dealt with the issue of dividing stock in a closely held corporation. Burton v. Burton, 326 P.2d 855, (Cal. 7pp. 1958), involved a divorce action by the wife. The superior court of San Diego County awarded the wife \$12,500.00 as her share of the community property, consisting of a one-half interest in a corporation, the stock of which was owned by her husband and his brother. The husband appealed and the District Court of Appeal held that the evidence, including that relating to the capital stock of the corporation, the value of assets and goodwill of the business, the gross sales and bad debt losses, supported the finding that the community property had a total value of \$50,000.00, and the wife was entitled to one-fourth of said value, or the sum of \$12,500.00. In arriving at that figure, the court did consider the value of assets including the goodwill of the business in valuing the stock.

In a case from Colorado, Kalcevic v. Kalcevic, 397 P.2d 483 (Colo. 1964), an appeal was taken by the husband primarily concerning the question as to whether certain assets of the husband were to be considered by the trial court in arriving at a property settlement. The Supreme Court held that where the husband owned one-third of the stock in a family owned farming corporation, the court erred when it failed to extend judicial

quiry to the value of the corporation's total assets for the purpose of effecting a just division of the property. In that case, the husband's principal asset at the date the decree was entered was not farm machinery, for he had years before transferred that to the family corporation for stock, but one-third of the stock in Kalcevic Farms, Inc., which company had valuable lands as well as machinery and other assets. The court stated: "Thus, the corporate veil could and should have been pierced all the way to determine the fair and reasonable value of Frank's stock." The court further stated with regards to the trial court's award to the wife of a lifetime estate in the residential property owned by Kalcevic Farms, Inc., that:

In the instant case, Frank is the owner of a minority stock interest and is not the owner of the home in question. Piercing the corporate veil to determine the true value of an interest in a closely held corporation is one thing. To order that part of the corporation's property shall be distributed to or used by a legal stranger is something else. As far as ownership goes, Rosemary is not entitled to corporate assets. What she is entitled to is a sum of money or possibly even shares of stock based upon the fair value of her husband's interest.

In the present case, this is what was exactly done by the trial court. The trial court did not award to the Respondent any of the corporate assets, but did in fact award a sum of money which it felt was a fair and equitable division of the value of her husband's interest in the corporation.

The case of Culver v. Culver, 572 SW.2d 617 (Ky. App. 1973), involved the husband's appeal from a property division entered by the lower court in a marriage dissolution

proceeding. In that case the trial judge valued the stock of Cumberland Welders at \$100,000. The court of appeals stated at page 621:

It is obvious that this figure constituted net value after the deduction of liabilities of the corporation. If Mr. Culver's argument were correct, the trial judge should have deducted liabilities in excess of \$82,000 from the \$100,000 value of the assets. This would have left a net value of less than \$18,000, a figure which is preposterous in light of the testimony by all of the witnesses.

The absurdity of this argument can be readily seen by examining the testimony of Mr. Harris, the only valuation witness who testified in the original hearings. According to Harris, the net worth of the corporation (retained earnings plus capital) exceeded \$131,000. This valuation was based upon his appraisal of the fair market value of the assets of the corporation decreased by the amount of the liabilities of the corporation. In the revised balance sheet prepared by Harris, no consideration was given to goodwill, an item which was included in another higher valuation of the corporation by Harris. In light of Harris' appraisal of the corporation based upon the fair market value of assets decreased by liabilities of the corporation, the trial court's finding that Cumberland Welders had a value of \$100,000 is not clearly erroneous. In fact, the trial court's valuation appears conservative.

Again, it is clear from this case that the net asset method for valuing stock in a closely held corporation has met with approval.

The case of Cross v. Cross, 586 P.2d 547 (Wyo. 1978), involved an appeal by the husband in a divorce action from that part of the judgment and decree which adjudicated a division of the property. The Supreme Court held inter alia, that with the husband claimed that the property division was so disparate, based upon what he asserted to be a proper valuation

of the stock of the ranch corporation, that there was a conflict about the exercise of discretion, the court could discern neither an abuse of discretion nor a lack of evidence to support the trial court's determination, as the evidence was susceptible to a conclusion that after deducting the debts charged to the husband, he still was left with stock in the ranch corporation having a value of \$300,000, was not burdened with other periodic payments except those needed to bring the wife's share up to \$150,000, and had reserved to him the growth potential of the ranch and corporation as a family unit. Therefore, the Supreme Court affirmed the decision of the trial court. Again in this case, the stock of the husband in a closely held family corporation was valued on the basis of the net value of the assets of the corporation.

Several Wisconsin cases have discussed the issue of valuing stock in a closely held family corporation. In Whitman v. Whitman, 149 N.W.2d, 529 (Wis. 1967) the Supreme Court held that because of the unsatisfactory nature of the evidence regarding the value of the stock of a family holding corporation, a principal asset of the husband, the interests of justice required a remand and new trial on the issue of the husband's net worth, so that a list of assets of the family holding corporation might be obtained and made a part of the record and expert testimony presented as to the market value of those assets. The court, in discussing the issue of the valuation of stock, cited Fletcher at page 531, and stated:

Fletcher, one of the leading authorities on incorporation law, states: "The fair value of corporate stock, at any given time, where there is no established market value, is nearly always a difficult problem, where the law does not intervene. It is not an exclusive value from the market value alone, there is no exclusive test or measure of actual value. In establishing the market value of stock in a close corporation, the value of the net assets of the company has an important bearing."

The court continued to state, at page 552:

Some authorities state that one of the elements to be considered in determining the market value of capital stock in a close or family holding corporation is "book value." However, "book value" is not any arbitrary value that may be entered on the books of a corporation, but rather is value predicated on the market value of the assets of a corporation.

In the case of Wahl v. Wahl, 39 Wise. 2d 516, 159 N.W.2d 651 (1968), the Supreme Court held that even though there had been a substantial increase in the value of land owned by a closed corporation over its cost basis, inasmuch as the divorce judgment awarding the stock did not require the sale or transfer of any stock, the trial court properly determined that stock of the corporation was worth as much as its assets, less its liabilities, and properly refused to reduce the value for theoretical tax consequences of the sale of stock. In the more recent Wisconsin case of Dean v. Dean, 87 Wise. 2d 834, 255 N.W.2d 962 (1979), the wife appealed from the judgment of the trial court which awarded a divorce to the husband and divided the property. The Supreme Court of Wisconsin stated at page 912:

As recited above, the trial court in this divorce action is not required to accept any one method of stock valuation as more accurate than another accounting

procedure. The court will not disturb a trial court's decision on the valuation of a closed corporation unless it is contrary to the great weight and clear preponderance of the evidence. The Estate of Golding, 257 Wisc. 2d 590, 62 N.W.2d 346. A trial court is free to accept expert opinion and determine fair market value in light of testimony regarding: the nature of the business, the corporation's fixed and liquid assets at the actual or book value, the corporation's net worth, the marketability of the shares, past earnings or losses and future earning potential.

Therefore, it can be seen from the Wisconsin cases that net worth of a corporation based upon its assets is a proper method for the valuation of the stock in a close corporation.

The Supreme Court of Iowa, in the case of Arnold v. Arnold, 133 N.W.2d 53, (Iowa 1965) has also had the opportunity to examine the valuation of stock in a closely held corporation. The Supreme Court in that case held inter alia, that the wife was not entitled to one-half of the net worth of the corporation, which was largely the result of the husband's efforts, where the divorce decree recognized her ownership of half of the home, its contents and a station wagon, all of which had been acquired with the husband's earnings. In this case, the amount found by the court as the value of the net worth of the corporation was taken from the balance sheet of assets and liabilities attached to the corporation's 1962 federal tax return which the plaintiff offered in evidence. In the present case, the court looked at the most recent financial statement of the corporation and used the net worth line as the value of the corporation assets, which was below the value placed upon the assets by Respondent's appraiser and slightly

higher than the value placed upon the assets by the Appellant's appraiser. Clearly this has been recognized as an approved method of valuing the assets of a decedent's estate, and the court did not abuse its discretion in doing so.

The case of In re Marriage of Moffatt, 279 N.W.2d 15, (Iowa 1979), is particularly on point in the present situation. In that case, the husband appealed from the economic provisions of a dissolution decree. The husband contended that the trial court overvalued his net assets and consequently made excessive property and alimony awards to his wife, Mary E. Moffatt. The trial court had found that the parties had net assets worth \$690,849.15. These assets consisted of cash, certificates of deposit, life insurance, "E" bonds, farm machinery, livestock, grain, and stock in two close corporations. Liabilities consisted of debts on various accounts, notes, encumbrances on farm machinery, and cash and grain advances from a farm corporation. The husband contended that his net assets did not exceed \$74,000. One of the corporations involved in the appeal was Moffatt Corporation, which owned 640 acres of farm land, livestock, grain and farm equipment. The corporation was formed by the husband's parents in 1973, as a means of passing their farm to Lynn and his sister, Mary Margaret Freeburne. The corporation issued 100,000 shares of stock. The parents made lifetime gifts of some of it equally to Lynn and his sister. Both parents died in 1976, leaving the remaining stock to the children equally. Thus, Lynn and his sister each owned

100,000 shares at the time of trial. They comprised the Board of Directors of the corporation. A by-law of the corporation gave the corporation the right of first refusal before any gift, sale or bequest of the stock to another person. In that event, the corporation, through its Board of Directors, had the option for thirty days to purchase the stock at a price fixed annually by the stockholders. This provision was intended to prevent sales of the stock outside the Moffatt family. The last option price had been fixed in 1975 at \$1.45 per share. From this, the husband contended that his interest in the corporation did not exceed \$145,000 because that is all the corporation would have to pay him if he wished to sell his 100,000 shares. The wife contended that the stock should be valued based upon the net worth of the corporation. She testified that the 621.6 acres actually comprising the farm were worth \$15,000 an acre, resulting in a value of \$466,200 for Lynn's interest. The court stated that although it did not have a full picture of the assets and liabilities of the corporation, the land was free of debt and the machinery and inventory of livestock and grain were worth more than the encumbrances against them. Therefore, the court, by valuing the corporation's net assets at the worth of the land, felt that this was a conservative approach. The court stated at page 18:

Lynn's argument that the trial court was bound by the \$1.45 per share figure has serious flaws. Under the terms of the by-laws, the option price is to be fixed annually by agreement of the shareholders or by

appraisal. No price was fixed in 1976 or 1977. Therefore the option price which would govern in 1978 had not been established.

Furthermore, if the corporation exercised its option, it did not do so when the elder Mollatts made gifts of the stock to Lynn and his sister and later bequeathed the remainder to them. At the time the elder Mollatts were the directors and it is unlikely they would have disagreed as directors with what they wished to do as stockholders. The same is true in the present situation. Because Lynn and his sister are the sole directors and have an amicable relationship, it is unlikely one of them would do anything as a director which would cause financial disadvantage to the other as a stockholder. More important, because they have equal voice as directors, the corporation could not exercise its option of first refusal without concurrence of both of them. Therefore, as a practical matter, Lynn is not limited to the option price if he should desire to sell his stock, nor is the court limited to that price in determining the stock's value for purposes of this action.

We conclude that the 1975 option price is merely one factor to be considered in determining the value of Lynn's 1978 interest in the Mollatt Corporation and is not determinative.

The court continued to state that an affidavit showing the value of the stock agreed upon by the Internal Revenue Service for Federal Estate Tax Purposes would not be binding upon the court because the valuation was based upon different information and had a different purpose.

In addressing the issue of the manner in which stock in a close corporation should be valued, the court stated at page 19:

Valuation of stock in a close corporation, based upon the corporation's net assets, was approved in *Humphrey v. Baron*, 223 Iowa 515, 213 N.W. 856 (1927). THIS FACTOR is also significant in Internal Revenue Service appraisals in analogous situations.

The court also gave weight to a financial statement which had been prepared for the parties by an accounting firm to show their financial situation on March 31, 1976. At that time the value of Lynn's 19,000 shares of stock in the Moffatt corporation was shown as \$57,600. The court found that this was some indication that the 100,000 shares he owned in 1978 were worth more than the \$145,000 as asserted by him. The court also considered the fact that at trial he had listed personal liabilities to the corporation for cash and grain advances of \$140,396.83; however, this amount was not listed as an asset of the corporation. If it was owed, the court stated, the value of his stock would be further enhanced. The court concluded at page 19 that, "Upon the entire record, we find his interest in the Moffatt Corporation is worth not less than \$466,200.00 as contended by Mary."

This case is very similar to the case that is presently before the court in that the Moffatt Corporation was a closely held family corporation dealing in the farming and ranching business, and in which the entire shares of stock were held by siblings. Also in that case, there was a restriction on the sale of stock, giving the corporation an option to purchase the stock should one of the shareholders desire to sell to a third party. The court recognized in that case that this was merely an option and no guarantee that the option would be exercised. Similarly, in the present case, all that is given to the corporation and Ralph or Arthur Argyle is an option to exercise

the purchase of the stock. As a practical matter, in the case, as well as in the Moffatt case, Arthur Apple is not limited in a practical sense to the order given by the wife's desire to sell his stock. Being a 50% shareholder in the corporation, he would have an equal say with Ralph Apple in the matter. Therefore, the holding of the court in Moffatt with regards to the valuation of the stock in the closely held corporation should also apply in the present case, and the decision of the lower court should be affirmed.

The only Utah case which counsel for the respondent was able to find involving the valuation of closely held stock in a divorce proceeding is the case of Michelsen v. Michelsen, 13 Utah 2d 328, 383 P.2d 932 (1963). In that case, the husband was appealing from a decree of the lower court granting the plaintiff-wife a divorce, awarding her alimony and certain property, and denying his cross-complaint. In that case, the parties at the time of their separation had been married for 34 years, and had had three children, who were adults and self-supporting at the time of the hearing. The defendant-husband was the president and manager of a distributing company and received a salary of \$500.00 per month. He owned 2,000 shares of stock in the company, which amounted to approximately one-fourth of the outstanding shares. The couple further owned a home situated on a 3 1/2 acre tract of land, the entire interest was valued at \$36,000. The plaintiff-wife also had an interest in the estate of her deceased father which was valued at

approximately \$12,000. The lower court awarded the defendant the shares of stock which the court found to have a value of \$26,000 and awarded to plaintiff the home, subject to the outstanding mortgage obligation in the amount of \$138.00 per month, and ordered the defendant to pay to the plaintiff the sum of \$245.00 per month as alimony. The defendant in that case contended that the evidence did not support the court's finding that the shares of stock involved have a value of \$26,000. The court stated at page 933:

It is true the company stock is closely held and not traded on the market, thus making a valuation thereof difficult. However, the stock has a par value of \$10.00 per share, and a recent financial statement indicates that defendant's equity in the company would exceed more than \$10.00 per share; thus the trial court's finding in this respect is supported by evidence.

Therefore, based upon the trial court's use of the financial statement which indicated defendant's equity in the company, it can be seen that this court has approved the method of examining the net assets of the corporation to arrive at a value for the closely held stock in that corporation.

CONCLUSION

In the present case, the Respondent has met the burden of proving the value of the husband's assets to be included in the marital estate. The Respondent did put on evidence as to the value of the shares based upon the value of the underlying assets of the closely held family corporation. Also, the

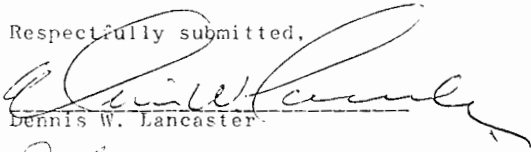
financial statements of Argyle Ranch, Inc., which the court relied upon did reflect the value of the stock owned by Arthur Argyle. The buy-sell agreement was entered into before the trial was before the court, and it cannot be said that the court did not take into consideration the effect of such buy-sell agreement. In the present case the court also failed to award any sum to the Respondent for her interest in the mineral rights which Argyle Ranch, Inc., owned. There was evidence submitted at the trial showing that the corporation had made a recent sale to a Mr. Knight, selling a one-eighth interest in the mineral rights for the sum of \$50,000.00, which would apparently establish a minimum valuation of \$400,000.00 for the mineral rights. (Tr. 306). Also, Argyle Ranch, Inc., has received from mineral leases on the land owned by the corporation, bonuses of over \$500,000.00 with the possibility that the leases on the mineral interests will continue and in the future give a substantial amount of income to the corporation. (Tr. 154-158).

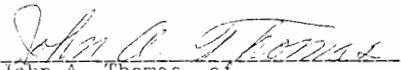
In the present case, the court has made its decision, supported by the evidence before it, of the value of the underlying assets of Argyle Ranch, Inc., and has arrived at a value of the shares of stock based upon this method of valuation, which, according to the cases cited above, is clearly one method by which a court may value shares in a closely held corporation. It would serve no purpose at the present time to send the case back to the lower court to

determine the value of the stock, since, if there was some other method of valuation that Appellant desired, he should have set forth that method at the time of the trial. At this time, the Appellant has still not set forth any other method of valuation, other than the methods which the court had before it at the time of the hearing for divorce. Therefore, Respondent would respectfully request that the decision of the trial court be affirmed.

Dated this 4th day of August, 1983.

Respectfully submitted,

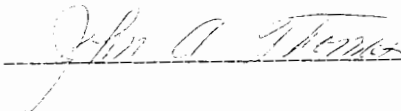

Dennis W. Lancaster


John A. Thomas, of
PHILLIPS AND LANCASTER, P.C.
822 Main Street, Suite C
P. O. Box 123
Evanston, Wyoming 82930

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 1983, I served the foregoing Respondent's Brief upon the Defendant-Appellant herein by mailing two true and correct copies thereof, by United States Mail, postage prepaid and addressed to the Attorney for Defendant-Appellant as follows:

Mr. Bryce E. Roe
ROE AND FOWLER
340 East Fourth South
Salt Lake City, Utah 84111


John A. Thomas